

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

VALERIE SHELDON,

Plaintiff,

v.

Civ. No. 09-51 MV/WPL

MESILLA VALLEY HOSPITAL, INC.

Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Defendant's Motion for Partial Dismissal (Doc. No. 15, filed March 3, 2009), Plaintiff Valerie Sheldon's Motion to File First Amended Complaint (Doc. No. 19, filed March 19, 2009) and Plaintiff Valerie Sheldon's Amended Motion to File First Amended Complaint (Doc. No. 22, filed April 26, 2009). For the reasons stated below, the Court will **DENY** Defendant's Motion for Partial Dismissal as moot, **DENY** Plaintiff's Motion to File First Amended Complaint as moot, and **GRANT** Plaintiff's Amended Motion to File First Amended Complaint.

Plaintiff filed a motion to amend her Complaint on March 19, 2009. (Doc. No. 19). Plaintiff subsequently filed an amended motion to amend her Complaint. (Doc. No. 22, filed April 26, 2009). The Court will deny her first motion to amend her Complaint as moot.

Plaintiff's Amended Motion to File First Amended Complaint seeks to "refine the issues in this litigation by eliminating three claims (Title VII, Breach of Contract, and Implied Covenant of Good Faith and Fair Dealing) and adding claims under the Family Medical Leave Act ("FMLA") and retaliation claims under the Americans with Disability Act ("ADA") and the New Mexico Human Rights Act ("NMHRA")." (Doc. No. 22 at 1-2). Defendant does not oppose the dismissal


of three claims but opposes the addition of claims on the grounds that Plaintiff's FMLA claim is untimely and that she did not exhaust her administrative remedies for her ADA and NMHRA claims. (Response at 1-4, filed April 30, 2009).

The Court will grant Plaintiff's Amended Motion to File First Amended Complaint (Doc. No. 22, filed April 26, 2009). *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."). Granting leave will not prejudice Defendant as this case was filed very recently, in January 2009, with the Provisional Discovery Plan (Doc. No.21) being filed on April 15, 2009. Defendant can raise its arguments regarding Plaintiff's FMLA, ADA and NMHRA claims in motions to dismiss or for summary judgment.

Defendant filed its Motion for Partial Dismissal (Doc. No. 15, filed March 3, 2009) seeking to dismiss the Title VII and NMHRA claims in Plaintiff's original Complaint. Because it is granting Plaintiff leave to file an amended complaint, the Court will deny Defendant's Motion for Partial Dismissal as moot.

**IT IS SO ORDERED.**

Dated this 9th day of June, 2009.

  
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MARTHA VAZQUEZ  
CHIEF UNITED STATES DISTRICT JUDGE

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